

FABIO VAN DER MERWE
UNITED STATES vs STATE OF GEORGIA

January 09, 2023

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1 UNITED STATES DISTRICT COURT

2 FOR THE NORTHERN DISTRICT OF GEORGIA

3 United States of America,

No.
1:16-CV-03088-ELR

4 Plaintiff,

5 vs.

6 State of Georgia,

7 Defendant.

8 ~~~~~

12 VIDEOTAPED VIDEOCONFERENCE ZOOM DEPOSITION OF

13 FABIO VAN DER MERWE

14 January 9, 2023

15 2:23 p.m.

16 Decatur, Georgia

23 Marcella Daughtry, RPR, RMR

24 Georgia License No. 6595-1471-3597-5424

25 California CSR No. 14315

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26 Also Present:

27 Sandra LeVert
28 Patrick Murphy, videographer
29 Dr. Robert Putnam

30 *** ALL PARTIES APPEARED REMOTELY ***

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1 THE VIDEOGRAPHER: We are now on the record.
2 Today is Monday, January 9th, 2023, and the time is
3 2:23 p.m. Eastern Time. This begins the videoconference
4 deposition of Fabio van der Merwe taken in the matter of
5 United States of America versus State of Georgia, Case
6 Number 1:16-cv-03088-ELR, pending in the U.S. District
7 Court for the Northern District of Georgia, Atlanta
8 Division.

9 My name is Patrick Murphy. I am the remote
10 videographer today, and our remote court reporter is
11 Marcie Daughtry. We are both representing Esquire
12 Deposition Solutions.

13 If counsel could please introduce themselves
14 for the record, and then our court reporter will swear in
15 the witness.

16 MR. HOLKINS: This is Patrick Holkins for the
17 United States.

18 MR. KIM: Andrew Kim for DeKalb County
19 Community Service Board.

20 MS. JOHNSON: Melanie Johnson for the State of
21 Georgia.

22 MR. PUTNAM: Robert Putnam for the U.S.
23 Department of Justice.

24 | >>>

25 | >>>

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1 FABIO VAN DER MERWE,
2 called as a witness herein, having been first duly sworn
3 by the shorthand reporter to speak the truth and nothing
4 but the truth, was examined and testified as follows:

5

EXAMINATION

7 | BY MR. HOLKINS:

8 Q Good afternoon, Mr. van der Merwe. How are
9 you?

10 A Good. Good.

11 Q I want to run through some instructions before
12 we dive into questions just to make sure that we're all
13 on the same page. As you know, this deposition is being
14 recorded both by video and by the court reporter.

15 Just for clarity, I would ask that you allow me
16 to finish my questions before you start your answers. Is
17 that all right?

18 A Yes.

19 Q Also, please provide verbal responses as
20 opposed to shaking your head or nodding your head. Is
21 that all right?

22 A Yes.

23 Q Do you have any documents in -- in front of you
24 at this time?

25 A I do have one document of notes that I wrote.

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1 Q Okay. And is that -- those are notes to assist
2 you in preparing -- in providing your testimony today?

3 A Yes.

4 Q Okay. So let's talk about that later, but
5 thank you for letting me know.

6 Do you -- do you have access to your e-mail
7 at -- at your desk right now?

8 A Yes.

9 Q Is your e-mail up?

10 A Yeah, I -- I can close it.

11 Q That would be helpful. Thank you.

12 Is there anyone in the room with you right now?

13 A No.

14 Q Okay. I'm going to be using some abbreviations
15 most likely today. I just want to run through them to
16 make sure that we're on the same page. If I reference
17 "DBHDD," will you understand that to reference the
18 Georgia Department of Behavioral Health and Developmental
19 Disabilities?

20 A Yes.

21 Q And if I reference "DCH," will you understand
22 that to mean the Georgia Department of Community Health?

23 A Yes.

24 Q If I reference "G-a-D-O-E" or "GaDOE," will you
25 know that means the Georgia Department of Education?

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1 A Yes.

2 Q And "CSB" stands for community service board,
3 correct?

4 A Yes.

5 Q If I reference "GNETS," will you understand
6 that to mean the Georgia Network for Educational and
7 Therapeutic Supports?

8 A Yes.

9 Q I don't think we're going to need a ton of time
10 today, but I still think it would be good for us to take
11 at least one break. And ordinarily, Mr. van der Merwe,
12 my -- my practice is to stop at about 90 minutes, if not
13 before then. If you need a break before that point,
14 please let me know, and we can take one. The same goes
15 to counsel and -- and the court reporter. My only
16 request is that if there is a question pending, that you
17 first answer that question before we take a break.

18 Is that okay?

19 A Understood.

20 Q Thank you.

21 So if you give me a second, I will pull up the
22 first document for today, which I think is going to be
23 Exhibit 810.

24 (Plaintiff's Exhibit 810 was marked for
25 identification.)

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1 Q BY MR. HOLKINS: I've just published what we
2 are marking as Exhibit 810. Mr. van der Merwe, this is a
3 copy of the subpoena that was issued to the Community, to
4 DeKalb Community Service Board, in order for you to
5 testify in this matter. Did you receive a copy of this
6 document?

7 A Yes, I did.

8 Q And to be clear, your counsel representing you
9 today is Mr. Andrew Kim; is that correct?

10 A Yes.

11 Q Have you been deposed before?

12 A Yes.

13 Q Have you been deposed in your capacity as chief
14 executive officer at DeKalb Community Service Board?

15 A Yes.

16 Q How recently?

17 A I believe it's been about eight months.

18 Q And what was that in connection with?

19 A That was in connection to a dispute between
20 DeKalb County and the City of Brookhaven.

21 Q What was the dispute?

22 A Sorry, involving a location, a center, a
23 facility that we were currently leasing.

24 Q Were you identified as a party in that matter?

25 A No.

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1 Q Have you -- have you provided any other
2 testimony in your capacity as CEO of DeKalb Community
3 Service Board?

4 A No.

5 Q Let's set this aside. I'm going to pull up
6 another document.

7 (Plaintiff's Exhibit 811 was marked for
8 identification.)

9 Q BY MR. HOLKINS: I've just published what I
10 would like to mark as Exhibit 811. This was a document
11 produced by the State of Georgia to the United States in
12 this litigation. The Bates number is GA00215160. It's
13 an e-mail from Joseph Colette sent to Judy Fitzgerald
14 dated July 28, 2020. The subject is "DeKalb Community
15 Service Board Executive Director/CEO," and there are a
16 number of attachments.

17 Mr. van der Merwe, I note that this -- that you
18 were a -- you were copied on this e-mail, correct?

19 A Yes.

20 Q And this e-mail pertains to the proposal by
21 DeKalb Community Service Board to retain you as the new
22 executive director, slash, CEO for the organization,
23 correct?

24 A Correct.

25 Q There are a number of attachments specifically,

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1 including your resume, which is attachment two; correct?

2 A Yes.

3 Q So I -- I'm going to show you your resume in a
4 second, but I just first want to ask about this process,
5 which is the proposal to Commissioner Fitzgerald, former
6 Commissioner Fitzgerald, with respect to your candidacy.
7 What's your understanding of DBHDD's role with respect to
8 approving candidates for the CEO role of -- at community
9 service boards?

10 A According to state law, the commissioner for
11 DBHDD has to approve the selection of a CEO and the CEO's
12 contract to DeKalb -- to a -- to a CSB, community service
13 board.

14 So as part of that process, we submit a packet
15 of information regarding the -- the board selection, my
16 resume, the CEO contract, and that goes to DBHDD, who
17 then reviews it under a committee and provides
18 recommendation. That committee provides recommendations
19 to the commissioner who then makes a decision on the
20 approval.

21 Q Is there an interview that's required? In
22 other words, were you interviewed as part of this process
23 by DBHDD?

24 A No, I was not.

25 Q So it's a review by a committee that receives

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1 this packet, a recommendation to Commissioner Fitzgerald,
2 in this instance, and a decision ultimately by
3 Commissioner Fitzgerald; is that accurate?

4 A Yes.

5 Q Is there any ongoing review performed by the
6 commissioner of DBHDD or other staff at DBHDD of CEOs or
7 executive directors at community service boards?

8 A Not that I'm aware of.

9 Q So once the CEO is installed and approved by
10 DBHDD, there is no reapplication or ongoing review
11 process; is that accurate?

12 A The -- the only -- once a contract expires or
13 there is any change in the CEO salary, those would
14 trigger a need to submit a new application. So, you
15 know, I was just recently renewed, and so the -- a new
16 application would have been submitted. Or if there is a
17 change in my salary, a request gets submitted for
18 approval.

19 Q Thank you. I'm going to stop sharing this
20 document and shift to one of the attachments,
21 specifically your resume, which is attachment two. Give
22 me one second.

23 So I've just published what I would like to
24 mark as Exhibit 812.

25 (Plaintiff's Exhibit 812 was marked for

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1 identification.)

2 Q BY MR. HOLKINS: This was an attachment to the
3 e-mail that we just discussed. The Bates number is
4 GA00215172, and it appears to be, from its cover, your
5 resume as of the date of submission, which was July of
6 2020. Is that correct, Mr. van der Merwe?

7 A Yes.

8 Q Obviously, a few years have elapsed, and I'm
9 sure that there would be updates you would provide under
10 your current role. But aside from that, do you have any
11 updates to this CV? And I can give you control, which I
12 will do now, if you'd like to take a look.

13 A The only update would be obviously for my
14 current role as actual CEO and executive director.

15 Q Got it. So if I -- if I am reading your resume
16 correctly, you've been an employee of DeKalb Community
17 Service Board since 2006, correct?

18 A During that time there were periods where I
19 left DeKalb and worked for another agency for -- I worked
20 for Magellan for about nine months, and then I worked at
21 the DBHDD for, I think, about a year and a half within
22 that period of time.

23 Q What is Magellan?

24 A Yes.

25 Q What -- what is Magellan?

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1 A Magellan is a managed care company. At the
2 time, Magellan was responsible for managing the
3 behavioral health component of several Medicaid state
4 contracts, including the -- one of the contracts here in
5 Georgia.

6 Q And could you just briefly describe -- I know
7 it's listed here in your resume, but in your own words,
8 could you describe your responsibilities when you were at
9 Magellan?

10 A Basically as the quality improvement manager,
11 my goal was to monitor the quality metrics that were part
12 of the contracts that our vendors would have. So
13 Magellan supported the behavioral health component for
14 the well care, managed care contract for Medicaid. So we
15 would look at the quality metrics that were in that
16 contract making sure that we were following them.

17 We would then provide support or advice in
18 terms of addressing those metrics. I was also
19 responsible for the accreditation process. So NCQA and
20 URAC are accreditation agencies for managed care
21 companies, so we would -- I would be responsible for
22 making sure that we would go through those accreditation
23 processes.

24 Q Thank you.

25 I want to direct your attention to the work

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1 that you did as described in this resume for DBHDD from
2 2007 to 2008. The first bullet references regional
3 oversight of psychiatric hospital admissions.

4 Could you describe what that entailed?

5 A So that -- what I would do there as a case
6 expert there, I would review admissions that came into
7 the hospital and coordinate with other community service
8 boards or other state agencies to ensure that those
9 clients would get -- get kind of transferred back in to
10 those communities; or if they were active clients, to
11 make sure they were getting referred back to the
12 appropriate organizations.

13 So it wasn't so much provide of the direct
14 admission; it was just to make sure that I was supporting
15 that admission process so we knew where these individuals
16 were coming from and then who would provide services
17 after care, after they left the State hospital.

18 Q Understood. So it would be fair to describe
19 this function as akin to care coordination and transition
20 planning for individuals needing a hospital setting?

21 A Yes. There were -- there were counselors and
22 therapists on the units that would do more direct; that
23 my -- my goal was to kind of work with the community
24 providers, work with those clinicians, making sure those
25 connections were happening. I -- I reported to the

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1 regional office for DBHDD that was responsible for this.

2 Q I see that the resume indicates that you also
3 provided direct care services as a substance abuse
4 counselor at the Johns Hopkins Health System in
5 Baltimore; is that correct?

6 A Yes.

7 Q Have there been other instances where you
8 provided direct care services?

9 A When I worked at the Domestic Violence Center
10 of Howard County, I was doing therapy, group therapy and
11 individual therapy for a court-mandated male batterer
12 program.

13 Q Your resume reflects that you had maintained a
14 certification in healthcare compliance through CHC. Is
15 that current?

16 A Yes.

17 Q Do you have any other professional licenses?

18 A No. That's the only one.

19 Q So let's set this aside. I'd like to ask you
20 some questions about your current role and your duties as
21 the CEO. Could you describe them for me.

22 A So as the CEO for the DeKalb CSB, I am the
23 DeKalb CSB board, our actual board of representatives and
24 their -- kind of their only employee and representative
25 for the agency. It's my -- they have kind of empowered

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1 me as the CEO to manage the day-to-day operations of the
2 DeKalb CSB. I am responsible for establishing a
3 leadership team, hiring staff, and managing overall
4 budgets.

5 That authority I often sometimes will delegate
6 to my chief financial officer. I also have a chief
7 clinical officer, a chief quality officer, and I work
8 with our leadership team to make sure that the agency is
9 operating within accordance of our contracts, our grants,
10 and supporting the community.

11 Q Do you have -- do you also have responsibility
12 over strategic planning, and by strategic --

13 A Yes.

14 Q -- planning, at the DeKalb Community Service
15 Board?

16 A So developing strategic plans for the
17 organization and reviewing those strategic plans with our
18 board, and then executing those strategic -- strategic
19 plans.

20 Q In your capacity as CEO of DeKalb Community
21 Service Board, do you coordinate on a regular basis with
22 staff at DBHDD?

23 A We do have meetings. Most of my meetings
24 will -- will happen with direct staff who are working on
25 those grants or projects, but there will be sometimes

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1 required meetings that I have to attend as a CEO.

2 Q And what are examples of those meetings that
3 you would attend as CEO?

4 A So just recently there is a new push for the
5 state for -- for community -- what's called certified
6 community behavioral health centers. We just received a
7 SAMHSA grant as part of that program, so DBHDD is -- is
8 kind of -- ultimately has to certify us, so we are having
9 meetings with DBHDD regarding that process. There has
10 also been regional meetings that I have attended
11 regarding behavioral health services, IDD services that
12 DBHDD oversights. And, you know, we'll have meetings
13 like with our crisis center, you know, updates regarding
14 the operation of our crisis center.

15 Q What does CCBHC stand for?

16 A Certified community behavioral health center.

17 Q You mentioned that DeKalb's CSB just received a
18 grant from SAMHSA --

19 A Yes.

20 Q -- in connection with the CCBHC. What was
21 that -- what was the amount of the grant?

22 A It is -- the grand total is 4 million. It's a
23 million over four years.

24 Q And what is the intended purpose of -- of the
25 grant?

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1 A It's what's called an implementation grant, so
2 the funding goes to provide supports in order for us to
3 get ready to become certified as a CCBHC. There are
4 certain requirements that we have to meet on a federal
5 level, as well as state requirements, as well, that DBHDD
6 has developed that we would have to meet. So the funding
7 goes to -- to ensure that we can meet those requirements.

8 Q Is the expectation that DeKalb Community
9 Service Board would be in a position to become a CCBHC
10 after that four-year implementation process?

11 A Yes, that is -- that is the goal, that we would
12 be certified by the State at the end of the four-year
13 period as a CCBHC.

14 Q What -- what was the impetus that pursued this
15 grant into becoming a CCBHC?

16 A The -- SAMHSA has -- and -- and the federal
17 government really is working on pushing this model. It's
18 kind of a new approach to mental health services,
19 especially crisis services in communities. It's an
20 attempt to kind of break down the barriers of care that
21 someone else with experience with mental health services.

22 CCBHCs are supposed to act very much like an
23 FQHC, which is the federated qualified health centers.
24 And there is, you know, push from the community for
25 eventually CCBHCs to be recognized as -- as such as an

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1 FQHC, which means that we can get direct federal funds
2 versus how we get funds now, which is through the State.
3 We'll -- federal funds come through the State and the
4 State gives us the funds. The goal eventually is for
5 CCBHCs to be like FQHC's.

6 We decided to go looking at this grant. We
7 thought that it was a good opportunity for our agency to
8 turn one of our locations, our Clifton Springs location,
9 to become a CCBHC. Clifton Springs location is in a
10 medical scarcity area.

11 (Court reporter clarification.)

12 THE WITNESS: Clifton Springs Mental Health
13 clinic, that location is a medically scarce area with
14 individuals with a low poverty level, and we felt that
15 having -- having that site be a CCBHC would be a good fit
16 for a community, and that's why we went ahead and applied
17 for the grant.

18 Q BY MR. HOLKINS: Thank you.

19 How would you hope or expect that becoming a
20 CCBHC in that location would help to expand access to
21 care for the community?

22 A Well, what it does is it's -- under the CCBHC
23 model, we basically can see -- one of the requirements is
24 that you provide a set of services to everyone that walks
25 in your door. So anyone who walks in the door can be

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1 seen, whether they have insurance or don't have
2 insurance, or whether they are a veteran or not a
3 veteran, and your goal is to provide that set of -- of
4 specific services to them.

5 And so I think seeing -- looking at that
6 community, being able to invest in more licensed clinical
7 staff, psychiatry staff, case management staff, being
8 able to provide much more Wraparound crisis services, we
9 just felt that that would be a good investment in federal
10 resources in that area.

11 Q And would you expect becoming a CCBHC would
12 assist your organization in expanding access to the --
13 the full menu of behavioral health services available to
14 both children and adults?

15 A Yes. So --

16 Q Would you say those are school-based services?

17 A The CCBHC model does not particularly focus on
18 school-based services. It's mostly focused on
19 clinic-based services or crisis-based services.

20 Q Would those services in theory be provided by
21 telehealth under the CCBHC model?

22 A They can be provided under telehealth.

23 Q Which could be delivered in a school setting as
24 well, correct?

25 A Yes. Potentially, yes.

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1 Q I wanted to show you another document. Just
2 give me a second and I will pull it up.

3 (Plaintiff's Exhibit 813 was marked for
4 identification.)

5 Q BY MR. HOLKINS: I just published what I am
6 marking as Exhibit 813. This was a document produced by
7 DeKalb Community Service Board to the United States, and
8 it responds to a document subpoena. The starting Bates
9 number is DEKALB000040.

10 By the face of the document, it appears to be a
11 strategic plan dated 2022 to 2025 for DeKalb Community
12 Service Board. The date of approval was 07/13/2022.

13 Mr. van der Merwe, you approved this strategic
14 plan, correct?

15 A Yes.

16 Q And this is the current strategic plan in place
17 in DeKalb Community Service Board?

18 A Yes.

19 Q And the statistics that are identified, are
20 provided in this second paragraph under "Overview," those
21 are accurate, to the best of your knowledge?

22 A To the best of my knowledge, yes.

23 Q I'd like to direct your attention to the first
24 line of the third paragraph that reads, "This level of
25 diversity presents challenges to the delivery of

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1 behavioral healthcare services."

2 Could you elaborate on what the organization
3 intended through that line or meant?

4 A It's ensuring that we have culturally competent
5 staff to meet the needs of our community. So DeKalb
6 County is extremely diverse. We also have a high
7 population of refugees from multiple countries that have
8 language barriers; also varying, variation of culture.
9 So being able to make sure that, you know, if we're gonna
10 be serving individuals in our community, that we have the
11 appropriate staff training, cultural competency,
12 trauma-informed care to effectively serve these
13 populations.

14 Q Thank you.

15 I want to direct you to the text under
16 "Strategic Planning Approach" at the top of page 2.
17 Under Part A, 'The strategic plan identifies categories
18 of data that DeKalb Community Service Board leadership
19 uses to identify strategic planning goals and chief focus
20 areas.' And in particular, I want to focus you on
21 numbers 5 and 6, quality improvement data and community
22 needs assessments.

23 Specifically, what quality improvement data is
24 DeKalb Community Service Board leadership using to
25 identify strategic planning goals in key focus areas?

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1 A So for quality improvement data, we have a
2 variety of different reports that we look at. So there
3 is what we call our state KPI reports or our quality
4 improvement indicator. These are reports that DBHDD
5 requires us to keep for our -- all CSBs are required to
6 keep this data, and it looks at a variety of different
7 things from access, service delivery. So we use that
8 data.

9 We also look at our -- we have some clinical
10 outcome metrics that we use, different standardized
11 assessments that we look to to track our population in
12 terms of their overall outcomes. There is also some
13 standard metrics, you know, often called HEDIS measures,
14 that we have that we're continuing to develop and look at
15 those.

16 We also have a series of quality improvement
17 committees that look at different things from our staff
18 trainings to, you know, our documentation of our staff
19 and how they are documenting. We also have a pharmacy
20 and therapeutics committee that looks at our prescription
21 and medications.

22 So those are all different components of kind
23 of the quality improvement components.

24 Q Is there a quality improvement committee that's
25 specifically looking at improvement of child and

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1 adolescent mental health services?

2 A Not one that's specifically looking at that
3 one, no.

4 Q And what quality improvement data relating to
5 children and adolescent mental health services is DeKalb
6 Community Service Board leadership using?

7 A Currently, we don't have anything specific that
8 we are looking at a -- at a leadership level perspective.

9 Q Let's turn to number 6, community needs
10 assessment. What does that mean?

11 A So as part of some of our grants, we do
12 community needs assessments as part of those grants, and
13 those are done by the program leads and in approved
14 formats. And we -- so we will take those community needs
15 assessments for those grants and include that as part of
16 our analysis.

17 Q So these are -- are, to make sure I understand,
18 grant-funded assessments, correct?

19 A Yes.

20 Q Okay. And are there any community needs
21 assessments that DeKalb Community Service Board is
22 conducting, whether funded by a grant or otherwise, with
23 respect specifically to children and adolescents' mental
24 health services?

25 A Nothing specific to children and adolescent

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1 services. You know, we had to submit one for the -- for
2 the recent CCBHC grant, and I think we submitted one for
3 another grant that we had with SAMHSA. They are not
4 particularly to -- for child and adolescent. They are
5 more so for overall agency.

6 Q You're familiar, I'm sure, with the Apex
7 Program, correct?

8 A Yes.

9 Q And just, could you briefly describe what the
10 Apex Program is because you mentioned it.

11 A The Apex Program is a school-based program
12 where it's a funding not only to provide clinical
13 services in a school setting, but also to provide
14 resources to the school, to teachers, to parents. So I
15 know with -- with our model, we have an integrated model
16 where we have staff, a clinician who kind of embeds
17 themselves within the school. They will work with
18 children at the school doing group therapy, individual
19 therapy, but then they will also do education with
20 teachers, with administrators, and they will also work
21 with some parents as well as part of that process.

22 Q DeKalb Community Service Board currently
23 contracts with DBHDD for the provision of Apex services,
24 correct?

25 A That is correct.

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1 Q And you approved those contracts along with
2 DBHDD, correct?

3 A Yes.

4 Q Does DBHDD require that DeKalb Community
5 Service Board perform any kind of community needs
6 assessment with respect to children and adolescent
7 services as a -- a condition of receiving that grant
8 funding?

9 A I do not recall.

10 Q We will pull up a copy of the -- the contract
11 in a little bit, but let's just keep going with this
12 document.

13 Under C, "Assessment of Key Focus Areas,"
14 number 1 is, "What is the organization's current
15 capability?" And number 2 is, "What is the
16 organization's desired future capability?"

17 Has DeKalb Community Service Board sought to
18 answer on both of those questions specifically with
19 respect to its school-based behavioral health program?

20 A Not from a strategic plan level perspective.

21 Q From any other perspective?

22 A I think there's been discussions internally
23 with the clinical department in terms of what do we need
24 to do with that program, where do we need to go with that
25 program. So on a -- on a programmatic level.

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1 Q And so had those discussions included defining
2 the organization's desired future capability for the Apex
3 Program?

4 A Sorry, can you repeat that question again?

5 Q Yeah, let me try again. And so my question is
6 whether the clinical kind of programmatic confrontations
7 that are occurring at DeKalb Community Service Board have
8 been defining your desired future capability for the
9 school-based behavioral health services being provided
10 through Apex?

11 A Yes. So, you know, the discussions that we
12 have had, you know, we had a discussion regarding
13 expansion of the program, see if we can go into more
14 schools, you know. And that obviously is limited based
15 on the DeKalb County Board of Health in terms of which
16 schools they want us to go into, as well as the
17 appropriate funding for us to expand in schools.

18 During COVID, you know, a big discussion that
19 we had regarding the Apex Program is, how do we continue
20 to provide Apex services to our client while they are in
21 remote learning situations? So I know we -- we had a lot
22 of conversations from a programmatic level of how to
23 address that.

24 And then also, you know, discussions in terms
25 of, you know, one gap is, you know, we are looking at

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1 Apex Program. It's a school-based program, but what
2 happens during the summer? And so we had a lot of
3 discussions about, how can we bridge that gap in terms of
4 making sure that we had -- we had an offering for the
5 clients that we are seeing to -- to make sure that any
6 gains that they had during the school year weren't lost
7 and had some type of program during the summer months.

8 Q Do you discuss with staff at DBHDD strategies
9 for achieving DeKalb CSB's future -- desired future
10 capability for Apex?

11 A We'll have -- like the one discussion in terms
12 of the expansion component is talking to DBHDD regarding
13 expansion, and -- and they did attend some meetings that
14 we had with the DeKalb County Board of Education in terms
15 of discussing potential expansion of the programs. So
16 those are some of the discussions that we have had with
17 them when we are looking at expanding.

18 Q Has the DeKalb Community Service Board
19 identified a specific target as to how many schools it
20 would like to serve through its Apex program?

21 A I don't think we've defined a particular target
22 in terms of how many schools we would like to expand to.
23 That's, I think, generally limited by how much money
24 that -- that is available to expand from. And then as I
25 said, the willingness of -- of DeKalb County Board of

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1 Education in terms of which schools we can expand into.

2 Q Give me one second.

3 A Sure.

4 Q I want to direct you to the text under "Key
5 Focus Areas" in the middle of page 2. This is under
6 "Stakeholder Experience." The first objective is,
7 "Deliver services in homes and community-based facilities
8 that are accessible, well-maintained, warm, and
9 welcoming."

10 Could you explain the importance of providing
11 services where possible in home, in community-based
12 settings for your clients?

13 A One thing that we learned during COVID is, is,
14 you know, clinic-based services may be not always the
15 best option. You know, before COVID, a lot of our
16 services were -- were clinic-based. Obviously, we had
17 the Apex Program. We had some community services. We do
18 have some residential homes, but we really -- COVID
19 really taught us in terms of going out into the community
20 and trying to provide as much services out in the
21 community.

22 So when we looked at the strategic plan, one
23 aspect is we want to make sure we can -- our locations
24 that we have are well-maintained; they are warm; they are
25 welcoming; they are safe, but then also look at ways for

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1 us to -- to provide services out in the community. And
2 where we are providing services out in the community,
3 ways that we can leverage telehealth to support those
4 services out in the community.

5 Q Would it be fair to say that one of the goals
6 here is to meet clients where they are?

7 A That -- that is one of our goals from the
8 strategic plan, yes.

9 Q And from your perspective, really from both the
10 clinical perspective, given your experience and also
11 administrative perspective, what's the value to a client
12 being able to access services where they are in their own
13 homes and communities?

14 A What we've found is that for certain clients
15 it -- it -- it takes out a level of anxiety and effort.
16 You know, it takes sometimes a lot to get on a bus and --
17 and take multiple bus rails to see a clinician, but being
18 able to have a clinician available on your phone or, you
19 know, being able to, you know, talk to a clinician on a
20 laptop when you need to see a clinician, that really
21 helps address that immediate need, reduces that stress.
22 And, you know, we feel that we have -- we don't have the
23 support of this as of yet, but, you know, potentially for
24 better outcomes.

25 I know a lot of our clients when we switched to

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1 telehealth during the COVID pandemic, they really felt
2 that it was useful for them, and they felt they were
3 getting more out of it than having to come into a clinic.
4 And, you know, as part of that we tried to figure out
5 ways we could do more of that but also realizing that
6 some individuals need more than just telehealth and --
7 and slowly developing ways we can identify who needs
8 telehealth and who doesn't and what other services we can
9 provide in that continuum of care.

10 Q Do you view DeKalb CSB's implementation and
11 expansion of the Apex Program as furthering this
12 strategic objective of meeting individuals where they are
13 and providing services in their own communities?

14 A Oh, I mean, I believe that there's a core
15 component for child and adolescent services, is, you
16 know, to meet them where they are, and they are in the
17 schools. And I think the Apex Program, I think, you
18 know, even preCOVID was a -- was a good step forward for
19 that and in providing services for clients in that
20 environment.

21 Q I want to scroll down to the strategic
22 objectives under "Clinical Services" which is part B on
23 page 3 and focus you in particular on the second
24 objective, "Expand the portfolio of evidence-based
25 practices offered to individuals."

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1 Do you see that text?

2 A Uh-huh.

3 Q First off, what informed the decision to make
4 this an objective in year 2022 to 2025 strategic plan?

5 A I think it's critically important to ensure
6 that the organization is looking at what is the best
7 evidence-based practices out there for different types of
8 individuals. And then, how can we -- how can we provide
9 that service under that evidence-based practice and
10 actually have a way to review, a formalized way of
11 reviewing evidence-based practices and incorporating
12 those practices within the organization, and then having
13 a feedback loop where we are actually tracking the data
14 to support the implementation of that -- of that program.

15 So really having a much more formalized process
16 with more rigid quality improvement metrics around that
17 process. I think it, one, ensures that we're truly doing
18 evidence-based practices, that we're constantly trying to
19 grow the offerings that we have and those offerings meet
20 the needs of our community, and that we can provide
21 feedback to stakeholders in terms of what we are actually
22 doing from an evidence-based practice.

23 Q Who is charged, if anyone, if applicable, at
24 DeKalb Community Service Board with expanding the
25 portfolio of evidence-based practices specific to

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1 children and adolescent mental health services?

2 A That would fall under our chief clinical
3 officer, Renee Dryfoos. She's over our -- our clinical
4 service delivery, and she would then work with our chief
5 quality -- chief quality and compliance officer, Chatelé
6 Chester, in terms of the data metrics, you know, system
7 design, those components.

8 Q Is expanding the portfolio evidence-based
9 practices offered to your clients a subject of
10 conversation between your staff and DBHDD officials?

11 A We haven't had conversations. I know it's --
12 it's an encouragement from DBHDD as a standard contract
13 to utilize evidence-based practices, but I don't believe
14 there is any discussion in terms of how we are going
15 about it and how we are doing it.

16 Q There's been no specific discussion about
17 expanding the portfolio of evidence-based practices; is
18 that correct?

19 A Not with me.

20 Q Have you participated in any discussions with
21 the Georgia State University Center of Excellence with
22 respect to expanding the portfolio of evidence-based
23 practices offered to DeKalb CSB clients?

24 A Not with -- no, not with them.

25 Q Do you coordinate at all with staff at the

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1 Georgia State University Center of Excellence?

2 A We've -- I've been on meetings with them. I
3 know they are doing some research projects for DBHDD for
4 some of the grants and some of the contracts that we are
5 under.

6 Q So you participate in meetings where Center of
7 Excellence staff are present, correct?

8 A Yeah. Yes.

9 Q But you don't meet specifically with -- excuse
10 me -- Center of Excellence staff; is that correct?

11 A No. I have not met specifically with them.

12 Q Okay. I will set this aside and just ask a few
13 more broad questions.

14 Do you meet at all in your official capacity as
15 CEO with staff at the Georgia Department of Education?

16 A No.

17 Q Do you meet in your capacity as CEO with any
18 staff at the Department of Community Health?

19 A No. Correction on that. So I have met with
20 members of -- of the healthcare facility regulatory
21 agency, which is the department that falls under DCH, and
22 they do our -- some of our certifications and licensing
23 for some of our locations.

24 Q Okay. Outside of that specific context, do you
25 meet with anyone at DCH?

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1 A No.

2 Q Do you meet with GNETS program directors --

3 A No.

4 Q -- in your official capacity?

5 A No.

6 Q What about -- strike that.

7 Have you -- well, first off, are you aware of
8 whether there is a GNETS facility within DeKalb County?

9 A I am aware.

10 Q And what is the name of that facility or those
11 facilities?

12 A I do not recall the name of that facility. I
13 know that it's -- it's about two miles from -- from one
14 of our locations that we have.

15 Q Could it be Eagle Woods?

16 A I believe that's the name of it.

17 Q Okay. Have you ever visited that GNETS
18 facility or any other GNETS facility?

19 A No.

20 Q Are you aware of any ongoing coordination
21 between clinical staff at DeKalb Community Service Board
22 and GNETS program staff?

23 A No, I'm not aware of it.

24 Q I'm going to pull up another document. Just
25 give me a second.

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(Plaintiff's Exhibit 814 was marked for identification.)

Q BY MR. HOLKINS: I have just published what we are marking as Exhibit 814. This is a document produced by DeKalb CSB to the United States in response to our document subpoena. The Bates range starts with DEKALB005015, and this appears to be, from its cover, the contract between DBHDD and DeKalb Community Service Board with respect to the Apex Program for FY 2022. Is that correct?

A Yes.

Q And this was a document that you reviewed and approved before it became finalized, correct?

A Yes.

Q The first page of the contract reflects the total allocation by the State through DBHDD to DeKalb Community Service Board for its Apex Program, correct?

A Yes.

Q And that amount is \$206,852?

A Yes.

Q Did that represent an increase or a decrease or a flat funding from prior years?

A I don't fully -- fully recall. I believe it may have been flat funding, but I --

Q You wouldn't -- sorry, go ahead.

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1 A That's all right. I don't fully recall, but
2 I'm -- I'm thinking it was flat funding.

3 Q Okay. Was this the only allocation of grant
4 funding that DeKalb Community Service Board received from
5 DBHDD towards the Apex Program for FY 2022?

6 A I would have to look and see because there's --
7 I know there is -- we have two levels, a 1.0 Apex Program
8 and a 2.0. I'm not sure if this one includes both of
9 those components.

10 Q Well, let me give you control of the document
11 and you can take a look at it, and then let me know if
12 the document answers that question. You've got control.

13 A The beginning is. I'm not sure if this is or
14 what. I'm not sure if this is from both.

15 Q Okay. What I can do is just take a look at it
16 during the break and see whether there are additional
17 documents produced by DeKalb CSB that may be contracts
18 for the other funding line.

19 And could you just describe the distinction
20 between Apex 1 and Apex 2?

21 A Apex 1 -- Apex 2, I believe, is an expansion on
22 Apex 1. So Apex 1 was a certain set, number of schools,
23 and then Apex 2 was for some additional sets of schools.
24 I think 2 has some additional requirements, but -- but
25 the director of C&A services would be better to

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1 understand, you know, the money differences, clinical
2 differences of those programs.

3 Q Understood.

4 I want to direct you to page 25 of -- of this
5 contract. There's a line. It's line item M for
6 productivity or billed cost. There's an amount in red
7 that's \$82,893.30. What is this for?

8 A There is an expectation with the Apex programs
9 that there is a -- what they call a productivity
10 expectation; that we are required to bill for whatever
11 services we can bill under the program, and so there's a
12 percentage of the total that are of personnel expenses
13 that have to be productivity based. So services were --
14 were generating revenue from billing whether it be
15 Medicaid, State contract or other insurance.

16 Q So there's an expectation built into this
17 contract that DeKalb CSB is going to generate at least
18 \$82,893 in revenue to support the Apex Program?

19 A Yes.

20 Q Has that number increased over time or is it
21 more or less the same year after year?

22 A It has increased over time from -- I think when
23 the Apex programs first came out there wasn't any
24 productivity requirements, and I think and over time
25 that's -- that's increased. I think right now we are at

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1 40 percent productivity.

2 Q Has either DBHDD or DeKalb CSB independently
3 identified a goal for what productivity level you would
4 like to reach or need to reach?

5 A No. We just follow what -- what standard is
6 required of us by the contract.

7 Q So under responsibilities on page 23, number 4,
8 I believe, defines what the floor is for billable direct
9 services. It's 40 percent; is that correct?

10 A Yes.

11 Q Is that the -- the standard that you were
12 referencing in the contract for what amount of
13 productivity is required?

14 A Yes, I believe so.

15 Q So at -- at present, based on this contract,
16 the goal is to essentially hit that floor of 40 percent
17 productivity; is that correct?

18 A Yes.

19 Q I want to direct you to number 10, develop
20 sustainability plan in coordination with community
21 partners. Do you see that text?

22 A Uh-huh.

23 Q And does DeKalb Community Service Board
24 currently have a sustainability plan in place for its
25 Apex Program?

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1 A I'm not sure if we have a current
2 sustainability plan. I would have to check with the
3 clinical team.

4 Q Okay. Number 8 references ensuring mental
5 health services be offered year-round, including a summer
6 program so there is no disruption in services. Do you
7 see that text?

8 A Yes.

9 Q You previously referenced an effort to develop
10 a summer program that would facilitate access to these
11 services through Apex. Is -- is that an accurate
12 statement of your testimony?

13 A Yes.

14 Q And can you describe the current status of --
15 of that program?

16 A So our summer program, we actually have -- we
17 work with the school system and actually utilize one of
18 their schools, and we actually -- for individuals who
19 enroll in the program, the summer program, we -- we
20 actually work with funding bus service with the DeKalb
21 County, and kids are getting picked up, and they are
22 going to the program during the summer. And at that
23 program we have, you know, clinical programs. We do
24 community activities. It is staffed with our licensed
25 clinicians that are part of the Apex Program.

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1 So generally for like the community activities
2 for the bus service, for the food that we will serve
3 individuals, that -- that gets paid through donations,
4 or, I think, recently we just had some County funds that
5 helped support those -- those components of the program,
6 but that's -- that's kind of our overall structure of our
7 summer program.

8 Q Is it accurate to say that DeKalb Community
9 Service Board essentially is -- is seeking private
10 donations outside of this contract to -- to fund Apex
11 services over the summer?

12 A For -- for certain components of the program,
13 yes. So the things that the -- that our current grant
14 does not pay for, we look for support from outside
15 donations to provide funding for that.

16 Q Is there any -- any effort by DBHDD to adjust
17 the grant amount to allocate support, the full spectrum
18 of Apex services year-round?

19 A There hasn't been any.

20 Q I am going to put this aside.

21 So we are a little bit over the hour mark, I
22 think. Let's go off the record.

23 THE VIDEOGRAPHER: Okay. Hearing no objection,
24 we are off the record at 3:23 p.m.

25 (The deposition was at recess from 3:23 p.m. to

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1 3:39 p.m.)

2 THE VIDEOGRAPHER: We are back on the record at
3 3:39 p.m. Please proceed.

4 MR. HOLKINS: Thank you.

5 Q BY MR. HOLKINS: So let's jump back in and look
6 at another document. Give me a second, and I will put it
7 on the screen.

8 (Plaintiff's Exhibit 815 was marked for
9 identification.)

10 Q BY MR. HOLKINS: I just published what we are
11 marking as 815. This was a document produced by DeKalb
12 Community Service Board to the United States in response
13 to the United States document subpoena. The Bates range
14 begins DEKALB004911. On its cover you will see a
15 Memorandum of Understanding between DeKalb Community
16 Service Board and the City Schools of Decatur dated
17 March 5, 2021 with a reference to the Georgia Apex
18 Project.

19 Mr. van der Merwe, have you seen this report?

20 A Yes.

21 Q And I'm going to scroll down to page 3 which
22 reflects that you signed this Memorandum of Understanding
23 on March 5th, 2021, correct?

24 A Yes.

25 Q And it's countersigned by the superintendent of

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1 the City Schools of Decatur, correct?

2 A Yes.

3 Q What's the purpose of this MOU?

4 A This -- the purpose of this MOU is an agreement
5 between the DeKalb CSB and the City Schools of Decatur to
6 provide Apex Program services within their school system.
7 So this kind of sets the requirements of the program.
8 So, you know, we're under through DBHDD, as well as
9 confidentiality requirements, and which is how our staff
10 would operate, what to expect from our staff.

11 Since no -- since no funding is changing hands,
12 it's an MOU versus a contract. And then through this,
13 the -- the cities or our partners then select which
14 schools they would like the Apex Program to be under.

15 Q And is having an MOU like this in place a
16 precondition to be eligible for DBHDD grant funds for
17 Apex?

18 A I don't believe it's -- it's a requirement. I
19 would have to go back and look at the actual contract.
20 But in order for us to be able to be in the schools, we
21 have to have some form of agreement with the schools. So
22 I -- I believe we -- we have to at least show that we can
23 provide these services in a school setting in order to
24 get the funding.

25 Q Understood. And does DeKalb Community Service

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1 Board have a similar MOU in place with each school system
2 that it provides Apex services to?

3 A Yes. So we have one for City Schools of
4 Decatur and one for DeKalb County Board of Education.

5 Q Okay. And are those contracts -- or, excuse
6 me, MOUs substantially similar?

7 A Yes.

8 Q These MOUs are renewed annually, correct?

9 A Yes.

10 Q And so there is an MOU currently in effect both
11 for Decatur City Schools and for DeKalb County schools,
12 correct?

13 A I will have to check back with the City of --
14 the City of Decatur, because we stopped providing
15 services in their schools, so I'm not sure if we got the
16 renewal back from them. But we do have one active for
17 the DeKalb County Board of Education.

18 Q Understood.

19 Under number 4 -- this is on page 1 of the
20 document -- there is a reference specifically to Talley
21 Upper Street Elementary School. Do you see that?

22 A Yeah.

23 Q And was that the school specifically where
24 DeKalb Community Service Board was providing Apex
25 services within Decatur City Schools?

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1 A Yes.

2 Q And that's the only school, correct?

3 A Yes. Yes.

4 Q In -- in this version of the MOU?

5 A Yeah, in this version of the MOU.

6 Q Okay. And has there been any effort, you know,
7 before or since this MOU to add additional schools?

8 A Yes. I mean, we -- the City of Decatur,
9 we've -- we've at least now, our C&A director, you know,
10 has met with the City of Decatur to look at what possible
11 schools we could expand into and which schools. I
12 believe we had two schools at one point for the City of
13 Decatur.

14 So there is always discretion about expansion,
15 and if we see an opportunity, DBHDD lets us know there is
16 additional funding for expansion, we will let the school
17 systems know and see if they are interested in expanding
18 the program.

19 Q Can you describe what the -- the process of
20 identifying schools to expand into is like. What are the
21 factors and criteria?

22 A I believe the contract for DBHDD is that
23 specific metric, school system metrics that the schools
24 are supposed to utilize in terms of identifying schools.
25 But I believe it's left up to the school systems based on

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1 potentially those metrics of which schools we would go
2 into.

3 Q So ultimately, DBHDD through its contract sets
4 criteria for which schools should be selected for
5 receiving it?

6 A I believe -- I believe they set -- I dont think
7 it's not so much specific criteria. It's -- it's
8 different metrics to look at to determine which schools
9 to go into.

10 Q Understood.

11 DBHDD ultimately makes the decision about
12 whether to approve expansion into new schools, separate
13 and apart from whatever agreement there may be between
14 the CSB and the school?

15 A Yes.

16 Q And, in fact, there had been instances at
17 DeKalb Community Service Board where your organization
18 has reached an agreement on a proposal to expand Apex
19 services into additional schools, but DBHDD has not
20 approved that funding request, correct?

21 A We've had that circumstance. I think we've
22 also have had circumstances where the DBHDD wanted to
23 expand schools and the school system didn't want to
24 expand.

25 Q Okay. Can you tell me a bit about that latter

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1 incident?

2 A Yeah. It was during COVID. You know, we had a
3 potential opportunity to expand into some additional
4 schools, and at the time, DeKalb Board of Education said
5 that, you know, at this time, they were focusing more on
6 kind of the COVID response and really couldn't support
7 any expansion of the schools. So -- so at that point,
8 we -- we weren't able to expand because of that.

9 Q Uh-huh. And has there been any renewed effort
10 to expand the schools served within DeKalb County through
11 Apex?

12 A I believe Janel has had some discussions with
13 them, with DeKalb, and continues to have discussions with
14 them. I don't think there is any -- there has actually
15 been any formal plan in terms of next steps for
16 expansion.

17 Q Is DBHDD involved in any way, to your
18 knowledge, in facilitating expansion of Apex into other
19 schools within DeKalb County?

20 A I think they are always willing for expansion.
21 I don't think they are -- I think generally in the past
22 we would approach them and say, you know, DeKalb is
23 looking to expand some more schools. Do we have any
24 additional funding to support this expansion? And we
25 would work from -- with them from then to see if there is

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1 available funding for expansion.

2 Q Before I set this document aside, I wanted to
3 draw your attention back to number 4 on page 1, which
4 references the requirement under this MOU that DCSB or
5 the DeKalb Community Service Board provide therapeutic
6 services at Talley Upper Street Elementary School.

7 Is there -- can you -- is there any -- I guess
8 the question I am trying to pose is, what -- what are the
9 scope of therapeutic services that DCSB must provide
10 under the terms of this MOU?

11 A So that's formed by a contract with DBHDD in
12 terms of what classes of service we can provide, and then
13 the -- the -- the classes of services are then dictated
14 in terms of how they operate through DBHDD's provider
15 manual. So there is the contract that kind of says, you
16 know, we are supposed to provide individual therapy,
17 group therapy. These are the therapeutic, what we call
18 billable services.

19 And then the provider manual then lays out,
20 well -- you know, what type of clients can receive the
21 services, you know, who can provide those services, how
22 often you can provide those services. So there is kind
23 of the -- the set of rules that are attached to those
24 individual services.

25 So, you know, we are responsible for -- for

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1 taking that on when we go in the MOU contract and -- and
2 based on looking at what DBHDD says we are supposed to
3 provide under the Apex Program, and then we're supposed
4 to involve a DBHDD provider manual in terms of how we
5 deliver those services.

6 Q I want to show you now a document that was
7 previously marked today with Ms. Allen. Give me one
8 second.

9 I just published what was previously marked as
10 Exhibit 803. For the record, the Bates stamp on this
11 document is GA00130770. It was produced by the State of
12 Georgia to the United States in this litigation.

13 This appears to be a letter dated November 20,
14 2020 under the letterhead of DeKalb Community Service
15 Board, which is signed by you, and it concerns an
16 application for Apex 3.0 funds.

17 Mr. van der Merwe, could you describe what this
18 letter is.

19 A May I have control for a sec?

20 Q Oh, of course. Thank you for asking. I should
21 have offered. Please take a moment to review the
22 document.

23 A Thank you.

24 So I'm refreshing my memory on this. So there
25 was another tier of the Apex Program that was open, Tier

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1 III, and we -- DeKalb CSB went for it and was not
2 awarded -- was not awarded its Tier III. So this was our
3 letter, you know, regarding this -- this situation as far
4 as in terms of explaining, you know, somewhat of our
5 confusion why we didn't get the Tier III funding at the
6 time looking at our overall scores that were submitted,
7 you know, our relationship with the DeKalb County Board
8 of Education and the services that we had been proven to
9 be delivered. So this was a -- just concerned, you know,
10 regarding the fact that DeKalb CSB wasn't given any
11 additional funds in region three for Tier III funding.

12 Q Thank you.

13 And to be clear, this is a letter that you sent
14 to DBHDD staff, correct?

15 A Yeah, to DBHDD, yes.

16 Q And Danté McKay in particular?

17 A Yes, who is the, I believe -- I'm not sure of
18 his exact title, but he is the director of child and
19 adolescent services.

20 Q OCYF, correct?

21 A Yeah.

22 Q I'm going to take control of the document back.
23 Give me one second.

24 So as I understand it from this letter, DeKalb
25 Community Service Board was seeking to expand its Apex

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1 Program to nine additional schools which collectively
2 have over 11,000 students, correct?

3 A Uh-huh.

4 Q Is that a yes?

5 A Yes. Sorry.

6 Q My understanding also is that there was a
7 meeting that occurred after you sent this letter with
8 DBHDD staff to discuss your request for reconsideration;
9 is that correct?

10 A Yes. I believe so, yes. It was a meeting.
11 After I sent that letter we had a meeting, a discussion
12 regarding it, and a discussion about our concerns. I
13 think DBHDD tried to explain their rationale of -- of why
14 we weren't awarded the letter. I don't recall the
15 specifics of that overall discussion, but we did have
16 that meeting.

17 Q At the end of that discussion, DBHDD did not
18 change its determination with respect to the Apex 3.0
19 funding for the DeKalb CSB, correct?

20 A Correct.

21 Q And I wanted to also make clear for the record
22 that this was a request that was made during the COVID
23 pandemic, correct?

24 A Yes.

25 Q So at this time, DeKalb County School District

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1 did not have concerns about expanding Apex into nine
2 additional schools?

3 A There -- there was -- there was some discussion
4 I think after this in terms of expanding. I think our
5 concern regarding with this was that that -- you know, it
6 would -- that DeKalb County had no -- had no funds
7 allocated to it, and that was our concern for Tier III.

8 And then I think later discussions with the --
9 the County, they -- they felt like they really couldn't
10 expand at that point in time. Our concern was once the
11 money was allocated to other counties it was gone, and we
12 would -- DeKalb County would lose out on that potential
13 Apex funding.

14 Q Just to make sure that I understand, at -- at
15 the time that DeKalb Community Service Board made this
16 request for Apex 3.0 funding, DeKalb County School
17 District was supportive of the effort to expand Apex into
18 additional schools?

19 A Yes. And then later on there was a change
20 in -- in -- in their focus.

21 Q Understood.

22 Was there a formal request made at that later
23 time for Apex 3.0 funding?

24 A Not at a later time. I think once -- once it
25 was awarded, it was awarded.

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1 Q Right. Because the award was set, and then
2 there hasn't been a reapplication, I guess I am asking,
3 for Apex 3.0 funding by DeKalb Community Service Board?

4 A I don't believe DBHDD has issued a statement of
5 need for 3.0.

6 Q Okay. Is it fair to say that the -- the
7 funding available through DBHDD to support the Apex
8 Program is a limitation on DeKalb Community Service
9 Board's ability to expand Apex into additional schools?

10 A Yes.

11 Q If more money were made available through DBHDD
12 to support the expansion of Apex in DeKalb County, would
13 your organization apply for that funding?

14 A Yes.

15 Q I will pull up another document. I am first
16 going to show you an e-mail chain and then the attachment
17 to that e-mail chain. Give me one second.

18 (Plaintiff's Exhibit 816 was marked for
19 identification.)

20 Q BY MR. HOLKINS: This is a document produced by
21 the State of Georgia to the United States in this matter.
22 The Bates range begins GA01451409. It's a series of
23 e-mails regarding consultation by DeKalb CSB to Clayton
24 CSB, and I want to scroll to the bottom of the chain,
25 which is an e-mail from an individual named Joseph Bona

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1 dated September 7, 2018. Do you see that text?

2 A Yes.

3 Q Who is that individual?

4 A Dr. Joseph Bona was our prior CEO.

5 Q Are you familiar with the report that's
6 referenced in his e-mail dated September 7th, 2018?

7 A Yes.

8 Q And before we go to that document, what was the
9 purpose of this consultative visit?

10 A Clayton CSB was having difficulty regarding
11 some of their finances and service delivery and overall
12 organization, and Dr. Lee Adams, who is the current CEO
13 for Clayton CSB, had asked if the DeKalb CSB would come
14 and do basically a consultation of the agency. So
15 Dr. Bona arranged for several of us and his leadership
16 team, as well as some of our staff, to go to Clayton CSB,
17 meet with their staff, analyze their business practices,
18 and provide a summary report in terms of recommendations
19 for him in terms of things that he may want to focus on
20 as an organization.

21 Q Has DeKalb CSB performed this kind of function
22 with other CSBs aside from Clayton in this instance?

23 A We've -- not -- not in terms of as -- as
24 extensive as (inaudible), but we have had other --

25 (Court reporter clarification.)

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1 THE WITNESS: So not as extensive as this. We
2 have had other CSBs come to our site where we have done
3 presentations in terms of our workflow, things that we do
4 from our organizational perspective, staffing ratios,
5 site visits. So we will have other CSBs come to us and
6 kind of look at our operations. But this was the first
7 time that we did an extensive, where we went to them and
8 did a full review of their system that I recall.

9 Q BY MR. HOLKINS: So I -- I see a reference to
10 GACSB, which I believe is the Georgia Association of
11 Community Service Boards; is that correct?

12 A Yes.

13 Q Did GACSB provide fundings to support this
14 evaluation?

15 A I believe they did in this circumstance as part
16 of membership program. I'm not sure of the specifics of
17 the arrangement that Dr. Bona worked out with the Georgia
18 CSB association, but I believe that was where the funding
19 came from.

20 Q Did DBHDD have any role in facilitating this
21 consultation by DeKalb Community Service Board to Clayton
22 Community Service Board?

23 A It's my understanding that the outreach came
24 directly from Dr. Adams. I think at that point he was
25 under kind of review from DBHDD and so, I think, wanted

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1 another perspective in terms of what he could do for the
2 agency.

3 Q What do you mean by under review by DBHDD?

4 A There are circumstances where DBHDD will go --
5 go into a CSB that is having financial difficulties and
6 put them on a -- kind of a -- a performance plan in terms
7 of things that they need to do to address the
8 organization. So I am familiar with Clayton being under
9 one. At one point, Cobb CSB was under one, and I believe
10 most recently Macintosh Trail is under one.

11 So they are generally -- you know, if
12 DeKalb -- if the -- if the State sees the CSB having
13 financial issues, organizational issues, they'll --
14 they'll come in with their team to kind of do a review
15 and provide a -- kind of a -- a plan.

16 Q So I want to stop sharing this document and
17 then briefly show you the attachment for the record. I
18 am sharing what I believe is 817.

19 (Plaintiff's Exhibit 817 was marked for
20 identification.)

21 Q BY MR. HOLKINS: This is GA01451412. The title
22 reads "Clayton CSB Consultation." The date is
23 September 7, 2018.

24 I can give you control of the document, Mr. van
25 der Merwe. But just to confirm, that this is the

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1 attachment, the report that you have recently described?

2 A Question?

3 Q Does this appear to be the complete report that
4 was submitted following the consultation with Clayton
5 CSB?

6 A Yeah. Yes.

7 Q Thank you.

8 I want to focus your attention on some text
9 here on page 6 where the letter reads, "I would strongly
10 recommend that you engage DBHDD as your partner in this
11 recovery. By this I mean I would ask DBHDD to offer you
12 the financial support necessary to stabilize your
13 organization," et cetera.

14 What kind of partnership would you envision
15 could occur between DBHDD and an organization like
16 Clayton CSB that could be under review in case it's in
17 financial distress?

18 A One -- one idea or one recommendation is for
19 DBHDD to look at just the overall funding mechanism for
20 the CSBs. A lot of our outpatient services that we
21 provide are what's under a fee for service contract,
22 where we don't get -- we don't get reimbursed until we
23 deliver the service, and then we have to bill for the --
24 have authorization for the service, bill for the service.

25 So there is a lot of steps that go between

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1 providing the service and actually getting paid for that
2 service, both for -- for Medicaid and state-contracted
3 services, but more particularly for state-contracted
4 services. There are only a few contracts that are cost
5 reimbursement contracts where we have to once again incur
6 the cost of the service and then submit for
7 reimbursement.

8 So if your organization is financially
9 stressed, you often don't have any cash reserves or
10 funding to pay your bills while you are waiting to get
11 reimbursed or going through the process of getting
12 reimbursed. So DBHDD when it comes to state funds has a
13 little bit of flexibility in terms of how they distribute
14 those state funds.

15 So one recommendation was to work with them to
16 see what they could come up with to maybe support the
17 organization to take that pressure off of having to incur
18 the expense and then go through the whole reimbursement
19 process to at least kind of give some stability to the
20 agency.

21 Q In your view, does DBHDD have a responsibility
22 to take the action that's required to ensure that
23 community service boards as the safety net providers and
24 behavioral health services regionally in Georgia are
25 financially sustainable?

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1 A I believe they -- they have that responsibility
2 as they are our primary contractor, and we work for and
3 are somewhat connected at the hip between the CSBs and
4 DBHDD. And DBHDD, I think in -- in certain circumstances
5 has -- has clearly supported the CSBs in that regard.

6 Q I will stop sharing this document. I want to
7 ask you just more broadly about the relationship between
8 CSBs and DBHDD. Could you describe how you approach that
9 relationship between the organization and DBHDD?

10 A I think it's somewhat a complicated
11 relationship. It's unique where if we were a regular
12 nonprofit organization, it would be a relationship you
13 would have with any kind of State agency and not -- and
14 for profit or nonprofit organization where, you know, if
15 there's a contract, we say how much it's going to cost to
16 pay for the contract. There is negotiations and then,
17 you know, the State contracts with us as a vendor to
18 provide the services.

19 CSBs are a little bit different because, one,
20 we are a tertiary of the State, so we are a quasi-State
21 agency, so we are connected to the State as a whole.
22 Because our employees are considered State employees, we
23 have to pay into the State system. So we have that
24 connection, all of our insurance, and so there is funding
25 that comes through DBHDD that's related to those things

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1 that goes from DBHDD through to us. So we have that
2 connection where we rely on DBHDD to -- for that funding
3 for some of those components of how we exist.

4 And then in terms of our contracts, you know,
5 our contracts are pretty much, you know, this is the --
6 this is the contract. This is the money. This is the
7 requirements you have. There isn't any -- in the
8 majority of the cases there is very little negotiation in
9 terms of those contracts. We get them. We sign for
10 them. We get the allocation of how much funding is given
11 to us, and then that's what we have to work with.

12 And then, obviously, the -- the fact that DBHDD
13 also now has the authority to remove a CEO, you know,
14 through consent of the Governor and also approves our
15 contract as CEOs, so that -- that creates a very unique
16 situation regarding our organization where there is that
17 kind of oversight from the Commissioner level.

18 Q You referenced the power to remove a CEO. Is
19 that something that has been added to DBHDD to look at
20 recently, or has that been long-standing?

21 A That's the same state law that was passed that
22 required the approval of CEO contracts. So the
23 Commissioner now has, through, I think, the Governor
24 approval, has the ability to remove a CEO, as well as
25 disband the CSB's board.

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1 Q To your knowledge -- and first off, when was
2 that legislation enacted; do you recall?

3 A I do not recall. It's at least been maybe
4 seven or eight years, maybe longer than that legislation
5 has been in place.

6 Q Has DBHDD, to your knowledge, ever removed a
7 CSB CEO?

8 A Yes.

9 Q When did that last occur?

10 A I don't recall a timeline, but it was the
11 Phoenix Center CEO. She was removed by the Commissioner.

12 Q Is this by Commissioner Judy Fitzgerald?

13 A Yes.

14 Q And to your knowledge, has DBHDD ever disbanded
15 a CSB under this law?

16 A They -- it's not my understanding that they've
17 disbanded a -- a CSB under the law. I do -- I do believe
18 there is -- Gateway CSB, I think, was one CSB that kind
19 of started the legislation, and I don't believe Gateway
20 right now has a board, and I believe the CEO of Gateway
21 is an employee of DBHDD.

22 Q So is DBHDD effectively in control of that CSB?

23 A I'm not -- I would say they've -- the CEO is
24 the employee of DBHDD, and they have no board. I do know
25 the -- the CEO personally, and I know he works for, you

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1 know, bettering the community. So, but he is an employee
2 of DBHDD.

3 Q Who is that individual?

4 A Dr. Mark Johnson.

5 Q And where is this CSB located?

6 A That CSB is the Chatham County Coastal region,
7 so it's several companies around Chatham County all the
8 way down. Brunswick, I believe, as well.

9 Q Would you agree that a good working
10 relationship between the CSBs and DBHDD is vital to the
11 health of the behavioral health services in Georgia?

12 A Yes. I think, you know -- you know, we are
13 the -- we are the providers in the community, and, you
14 know, we are truly the safety net providers. I mean, our
15 primary mandate is to serve individuals who, you know,
16 have no insurance or have nowhere else to go for service
17 delivery, and they come here. And so, you know, we are
18 akin to the needs of our community. That's our goal, is
19 to serve our community. And -- and, you know, we have to
20 work with DBHDD who is really the payer and the funder of
21 those services.

22 MR. HOLKINS: I'd like to take about a
23 15-minute break and consult with my colleagues. Can we
24 go off the record?

25 THE VIDEOGRAPHER: Okay. Hearing no objection.

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1 We are off the record at 4:13 p.m.

2 (The deposition was at recess from 4:13 p.m. to
3 4:29 p.m.)

4 THE VIDEOGRAPHER: We are back on the record at
5 4:29 p.m. Please proceed.

6 Q BY MR. HOLKINS: Mr. van der Merwe, I just have
7 a couple more questions for you. Are you familiar with a
8 DBHDD and provider network Joint Provider Advisory
9 Council?

10 A Yes.

11 Q What is the purpose of that council?

12 A That council is made up of several agencies
13 across the state. It's been a while since we've had a
14 meeting, but it's to -- to meet with DBHDD. You know, if
15 DBHDD has some plans put forward, they will present it to
16 the committee and offer some discussion regarding, you
17 know, potential programs, plans that DBHDD is working on.
18 And, you know, we -- we sometimes have subcommittees as
19 part of that.

20 So I believe I was on the crisis subcommittee
21 where we met with certain members of the crisis -- crisis
22 services to discuss kind of our issues that we were
23 experiencing under crisis services.

24 Q You have mentioned it's been a while since that
25 entity met. Can you recall about how long it's been?

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1 A It's been probably around six months. I don't
2 know the exact date, but it's been -- been some time.

3 Q And before that point, was the council meeting
4 monthly, quarterly? How often?

5 A I believe it was quarterly.

6 (Plaintiff's Exhibit 818 was marked for
7 identification.)

8 Q BY MR. HOLKINS: So I'm going to show you one
9 more document. Give me a second. This is a series of
10 slides that were produced by the State of Georgia to the
11 United States in this matter. The Bates number is
12 GA03979855. And from its cover, it appears to be an
13 agenda for a meeting of the DBHDD and provider network,
14 Joint Provider Advisory Council.

15 This is from March 23, 2021. I want to direct
16 your attention to the third slide, which includes some
17 suggested changes to work group formats and specifically
18 a suggestion to organize collective work around DBHDD
19 priorities. One of those priorities listed is Apex and
20 SOC focus on more partnerships.

21 First off, what is SOC?

22 A I believe that refers to System of Care.

23 Q And what's your understanding of the
24 suggestions you focused on for partnerships in this
25 bullet?

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1 A I'm not sure what they are referring to in that
2 one. I think this is what ended up being our work
3 groups, at least that we constituted. So there was -- so
4 I was on the crisis continuum planning work group.

5 Q Understood. So these were subcommittees in the
6 council, and you worked on the crisis continuum and
7 planning --

8 A Yes.

9 Q -- subcommittee?

10 Okay. Has there been any reports to the full
11 council with regards to the work of the Apex and System
12 of Care subcommittee?

13 A I believe when we were meeting there was some
14 updates. The work group would report to the main group.
15 I don't recall the nature of what the update was.

16 Q Just a few more questions for you. I'm going
17 to ask you about your preparation for today's deposition.
18 I want to make clear that I'm not asking you to reveal
19 any substantive communications that you had with your
20 attorney in preparing for this deposition. Do you
21 understand that?

22 A Yes.

23 Q So with that understanding, what did you do to
24 prepare for today's deposition?

25 A I reviewed some of the documents that our

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1 agency sent to you. We did have one meeting with our
2 attorney to kind of just review prep time for that, and I
3 reviewed just looking at some data points in terms of
4 just number of clients, C&A clients we serve in the
5 agency. You know, how long we had the Apex Program for.
6 So it was just looking at some of that data.

7 And I did some just research based on, you
8 know, what a GNETS school was and tried to look at
9 getting some -- just some understanding of the GNETS
10 program.

11 Q What did your research reveal with regards to
12 what the GNETS program is?

13 A It was limited, I think. I just went to the
14 main website in terms of what the program looks like.
15 You know, looking at how they are structured. I didn't
16 find too much information. That's where I did find there
17 was at least one GNETS school in DeKalb County.

18 Q Do you have any understanding from this
19 research or prior knowledge of what behavioral health
20 services are provided in GNETS settings?

21 A No.

22 Q You mentioned at the beginning of the
23 deposition that you had in front of you a page of notes.
24 Did you rely on those notes in providing your testimony
25 today?

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1 A No.

2 Q Okay. Then I won't ask about them.

3 Did you discuss your anticipated testimony
4 today with any representatives of the State of Georgia?

5 A No.

6 Q That includes State agency staff at DBHDD.

7 A No.

8 Q So you did not -- just to make sure the record
9 is clear, you did not discuss your anticipated testimony
10 with State agency staff at DBHDD?

11 A I did not discuss my anticipated testimony with
12 anyone at DBHDD or the State agency.

13 Q Okay. And did you meet with any
14 representatives, attorneys for the State of Georgia in
15 this matter before you provided testimony today?

16 A I did not meet with any State attorneys.

17 MR. HOLKINS: All right. I am all done.

18 Andrew and Melanie, do you have any questions
19 before we wrap up?

20 MR. KIM: No questions on my end.

21 MS. JOHNSON: And no questions on behalf of the
22 State.

23 MR. HOLKINS: Mr. van der Merwe, thank you so
24 much for your time and for your cooperation, not just
25 yours, but your staff's, both in responding to the

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1 document subpoena and facilitating these depositions. We
2 greatly appreciate it.

3 THE WITNESS: Thank you very much.

4 MR. HOLKINS: Take care.

5 THE WITNESS: Have a good day. Bye-bye.

6 THE VIDEOGRAPHER: Okay. There is no other --
7 nothing else for the record, we will now go off the
8 record at 4:36 p.m.

9 And just looking to confirm, Plaintiff would
10 like their standing order plus a rough draft, correct?

11 MR. HOLKINS: Yeah. The rough for both this
12 deposition and Ms. Allen's.

13 (The deposition concluded at 4:36 p.m.)

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1 CERTIFICATE OF REPORTER

2 State of Georgia)
3 COUNTY OF DEKALB)

4

5 I, Marcella Daughtry, a Certified Reporter in
6 the State of Georgia and State of California, do hereby
7 certify that the foregoing deposition was taken before me
8 in the County of DeKalb, State of Georgia; that an oath
9 or affirmation was duly administered to the witness,
10 FABIO VAN DER MERWE; that the questions propounded to the
witness and the answers of the witness thereto were taken
down by me in shorthand and thereafter reduced to
typewriting; that the transcript is a full, true and
accurate record of the proceeding, all done to the best
of my skill and ability;

11 The witness herein, FABIO VAN DER MERWE, has
12 requested signature.

13 I FURTHER CERTIFY that I am in no way related
14 to any of the parties nor am I in any way interested in
the outcome hereof.

15 IN WITNESS WHEREOF, I have set my hand in my
16 office in the County of DeKalb, State of Georgia, this
20th day of January, 2023.

17
18 
19

20 Marcella Daughtry, RPR, RMR
21 GA License No. 6595-1471-3597-5424
22 California CSR No. 14315

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1 United States of America v. State of Georgia

2 Our Assignment No. J9066992

3 DECLARATION UNDER PENALTY OF PERJURY

4

5 I declare under penalty of perjury that I
6 have read the entire transcript of my deposition taken in
7 the above-captioned matter or the same has been read to
8 me, and the same is true and accurate, save and except
9 for changes and/or corrections, if any, as indicated by
10 me on the DEPOSITION ERRATA SHEET hereof, with the
11 understanding that I offer these changes as if still
12 under oath.

13

14 Signed on the _____ day

15 of _____ 2023.

16

17

18

19 _____

20 FABIO VAN DER MERWE

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1 DEPOSITION ERRATA SHEET

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22 Reason for change: _____

24 SIGNATURE: _____ DATE: _____

25 FABIO VAN DER MERWE

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1 DEPOSITION ERRATA SHEET

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6 _____

7 Reason for change: _____

8 Page No. _____ Line No. _____ Change to: _____

9 _____

10 Reason for change: _____

11 Page No. _____ Line No. _____ Change to: _____

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13 Reason for change: _____

14 Page No. _____ Line No. _____ Change to: _____

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16 Reason for change: _____

17 Page No. _____ Line No. _____ Change to: _____

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19 Reason for change: _____

20 Page No. _____ Line No. _____ Change to: _____

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22 Reason for change: _____

24 SIGNATURE: _____ DATE: _____

25 FABIO VAN DER MERWE